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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,381	06/27/2003	Daniel J. Weldon	1372-P	7994

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SCHMEISER OLSEN & WATTS
18 E UNIVERSITY DRIVE
SUITE # 101
MESA, AZ 85201

EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,381

Applicant(s)

WELDON, DANIEL J.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/24/05.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12 and 15-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 10-12, 15, 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al (US D 307,850) in view of Perry (US 5,467,891) and further in view of Williams (US D 453,449). Regarding claim 1, Aoki et al teaches an insulating sleeve for a beverage container with annular gripping members but does not teach the opening in the bottom. Perry as seen in Figs. 3-5, teaches a insulating receptacle for a beverage container with an opening in the bottom 30. It would have been obvious to employ the opening of Perry in the device of Aoki et al to provide the vacuum breaking function as taught by Perry in Col. 3, line 15. The modified device of Aoki et al does not teach the plurality of suction cups on the sleeve. Williams as seen in Figs. 1-4, teaches a similar device with a plurality of suction cups on the bottom of the sleeve. It would have been obvious to employ the suction cups of Williams in the modified device of Aoki et al to prevent the holder from tipping over or from moving along the surface on which it is placed. Regarding claim 3, the annular gripping members are capable of sealing engaging the container depending upon the size the container placed in the holder. The gripping members do not lack any structure for performing this function. Regarding claim 4, there are at least three gripping members one of which is located at the first or open end. Regarding claim 5, the gripping

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ribs are spaced adjacently the first and second openings. Regarding claims 7 and 16, the material is flexible as seen in Figs. 4 and 5 and will inherently have some insulation value. Regarding claims 10-12, see the above discussions. Regarding claim 15, the plurality of suction cups on the bottom are adjacently spaced from the lower sidewall walls ribs. Regarding claim 18, the cups are secured to the flange. Regarding claim 19, the modified device of Aoki et al does not teach the plurality of suction in the specified range. Applicant has not specified that a specific number of cups is a critical value. It would have been obvious to one of ordinary skill in the art to vary the number of cups to provide to the necessary or required holding strength.

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al in view of Perry and Williams as applied to claims 7 and 16 respectively above, and further in view of LaCour et al (US 6,00,575). Regarding claims 8 and 17, the modified device of Aoki et al does not teach the cups extending through an aperture in the flange. LaCour et al, as seen in Fig. 1, teaches a similar device where a suction cup is attached to the bottom through an aperture in the flange. It would have been obvious to attach the suction cups in the modified device of Aoki et al as taught by LaCour to provide a simple way to secure the cups to the holder.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al in view of Perry and Williams and LaCour as applied to claims 8 above, and further in view of McCoy (US 3,149,390). Regarding claim 9, the modified device of Aoki et al does not teach the suction cups being secured with adhesive on the stems. McCoy teaches suction cups with stems received into openings where the stems are secured

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with adhesive. It would have been obvious to employ the adhesive of McCoy in the modified device of Aoki et al to permanently secure the cups as taught by McCoy.

Response to Arguments

Applicant's arguments with respect to claims 1, 3-12, and 15-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gooch (US D 353,975) is cited for teaching a insulating beverage sheath with annular grooves.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

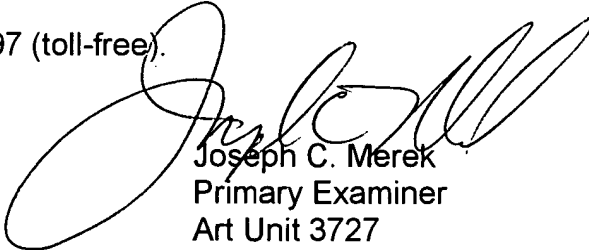
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek
Primary Examiner
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